

To all Sheriffs, Chiefs, Trainers, School Directors and Supervisors:

On January 11, 2016 , the U.S. Fourth Circuit Court of Appeals issued an opinion in the case of *Armstrong v. Village of Pinehurst* which dramatically changes the legal landscape governing TASER use by officers. **Effective immediately, TASER use as a pain compliance tool against a resisting subject is prohibited by the Fourth Amendment unless the police can articulate "immediate danger" to the officer apart from the fact of resistance alone.** This is true whether the TASER is used in probe deployment or drive stun mode.

Holding: "Where, during the course of seizing an out-numbered mentally ill individual who is a danger only to himself, police officers choose to deploy a taser in the face of stationary and non-violent resistance to being handcuffed, those officers use unreasonably excessive force. . . Law enforcement officers should now be on notice that such taser use violates the Fourth Amendment." In other words, "taser use is unreasonable force in response to resistance that does not raise a risk of immediate danger." The court concluded: "At bottom, 'physical resistance' is not synonymous with 'risk of immediate danger.'" On the same note: "Even noncompliance with police directives and non-violent physical resistance do not necessarily create 'a continuing threat to the officers' safety.'"

Facts: "Armstrong was a mentally ill man being seized for his own protection, was seated on the ground, was hugging a post to ensure his immobility, was surrounded by three police officers and two Hospital security guards, and had failed to submit to a lawful seizure for only 30 seconds. A reasonable officer would have perceived a static stalemate with few, if any, exigencies -- not an immediate danger so severe that the officer must beget the exact harm the seizure was intended to avoid."

Rationale: "Our precedent, then, leads to the conclusion that a police officer may only use serious injurious force, like a taser, when an objectively reasonable officer would conclude that the circumstances present a risk of immediate danger that could be mitigated by the use of force. At bottom, 'physical resistance' is not synonymous with 'risk of immediate danger.'"  
Note: The court left open "the possibility that taser use could be justified in some cases where an arrestee's non-compliance

could be described as non-violent. Such a situation would require the existence of facts from which an officer could reasonably conclude that the resistance presents some immediate danger despite its non-violent character.” But the court does provide examples of what might constitutes those facts.

Concerns: -“At bottom, ‘physical resistance’ is not synonymous with ‘risk of immediate danger.’”

NOTE: The decision actually promotes the notion that officers should go “hands on” with the mentally ill and other resisting subjects rather than utilize the TASER to overcome resistance and get the person in handcuffs.

NOTE: This proposition ignores that one of the TASER’s best attributes is the proven reduction of officer and suspect injuries by allowing control to be effected without officers having to go hands on.

NOTE: The decision does not discuss the proper use of other pain compliance devices or techniques.

-“[T]he use of force that may be justified by” the government’s interest in seizing a mentally ill person, therefore, “differs both in degree and in kind from the use of force that would be justified against a person who has committed a crime or who poses a threat to the community,” and “[m]ental illness, of course, describes a broad spectrum of conditions and does not dictate the same police response in all situations.”

NOTE: The court does not tell us what force is reasonable, only that the TASER without risk of immediate danger is unreasonable. The court implicitly places a burden of analyzing the person’s degree and type of mental illness on the officer to diagnose.

- "Noncompliance with lawful orders justifies some use of force, but the level of justified force varies based on the risks posed by the resistance."

NOTE: The court does not tell us what level of force is justified when subject is noncompliant with lawful orders, nor what those risk factors are.

Going forward: All future TASER use is now subject to the Fourth Circuit's pronouncement that "Taser use is severe and injurious regardless of the mode to which the taser is set." Although that statement is not factually true, today the Court said it, and thus it's now controlling law.

How this decision might affect other applications of uses of force and pain compliance techniques is unclear.

**Therefore, please pass this information along to your TASER/defensive tactics instructors for dissemination to the troops ASAP.**

**Written departmental policy on TASER use will also have to reflect this change in the law.**

**Have officers prepared to articulate why particular uses of force were necessary and proportionate to the resistance offered by the citizen.**

**Confer with your legal counsel.**

This decision can be found at  
<http://pacer.ca4.uscourts.gov/dailyopinions/opinions011116.htm>

NOTE: Special thanks to Scott MacLatchie of Womble Carlyle Sandridge & Rice, LLP for his assistance and input.